

PT 99-38

Tax Type: PROPERTY TAX
Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

BELLEVILLE AREA COLLEGE)	Docket #	97-79-14
Applicant)	A.H. Docket #	98-PT-0029
)		
v.)	Parcel Index #	13-011-003-000
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Stephen R. Wiggington, Becker, Paulson & Hoerner, P. C., for Belleville Area College.

Synopsis:

The hearing in this matter was held in Collinsville, Illinois on August 27, 1998, to determine whether or not Randolph County Parcel Index No. 13-011-003-000. qualified for exemption during the 1997 assessment year.

Robert J. Hilgenbrink, Vice President of Administrative Services for Belleville Area College, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant. The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is an educational organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel during a portion of the 1997-assessment year. It is also determined that the applicant is an educational organization. Finally,

it is determined that the applicant did not use the property for educational purposes during the portion of the 1997 assessment year that it owned the property.

Findings of Fact:

1. The jurisdiction and position of the Department that Randolph County Parcel Index No. 13-011-003-000 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 7)

2. On November 20, 1997, the Department received a property tax exemption application from the Randolph County Board of Review for Permanent Parcel Index No. 13-011-003-00. The applicant had submitted the request, and the board recommended granting a full year exemption for the 1997 assessment year. The Department assigned Docket No. 97-79-14 to the application. (Dept. Grp. Ex. No. 2)

3. On February 26, 1998, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing conducted at the Illinois State Office Complex, 1100 Eastport Plaza Drive, Collinsville, Illinois on August 27, 1998 was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired Randolph County Parcel Index No. 13-011-003-000 by a trustee's deed dated May 22, 1997. The parcel consists of approximately 8.66 acres. The subject parcel is contiguous and to the south of the applicant's Red Bud Campus. (Dept. Ex. No. 2 pp. 1, 7-8; Applicant's Ex. No. 1; Tr. pp. 8-9)

7. At the time of the application, the applicant was not utilizing the property for farming purposes. The applicant intends to either use the parcel for farming in the future, or eventually to utilize it to build additional classrooms or for future expansion of the educational facility at Red Bud. There are no immediate plans for expansion onto the parcel at issue. (Dept. Ex. No. 2 pp. 1, 4-5; Tr. pp. 10, 13)

8. James Guebert, who has been renting approximately 47 acres from the prior owner of the parcel, utilizes the subject land for farming. The rental arrangement was done by a verbal lease and had been in existence in excess of 10 years. Prior to 1998, the arrangement was that the net rental receipts were shared between the prior owner and the farmer. The arrangement was that 1/3 of income and expenses went to the prior owner and 2/3 of the income and expenses were borne by the farmer. According to a letter written to the applicant by the former owner, the net rental receipts for the entire 47 acres rented by the farmer in 1997 was \$1,463.00. The amount of applicant's share would have been \$269.61, should the applicant have been entitled to the rent on its 8.66 acres for that year. (Applicant's Ex. No. 1)

9. The applicant memorialized its rental arrangement with Mr. Guebert for the subject parcel for 1998 pursuant to a written agreement for rent of \$400.00. That amount is to be paid by Mr. Guebert to the applicant for 1998 for farming the subject parcel. (Applicant's Ex. No. 1; Tr. p. 10)

10. I take administrative Notice of the fact that the applicant has been granted a property tax exemption by the Department pursuant to Docket No. 89-60-559 and a partial exemption pursuant to Docket No. 92-82-2588 for other properties owned by the applicant. The exemptions were granted to Belleville Area Junior College, Community College District #522, which is a taxing district according to Departmental Records.

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

The applicant has requested an exemption under any applicable statutory provision that might apply. Those provisions are found at: 35 **ILCS** 200/15-35 which states “. . . and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, . . .” or 35 **ILCS** 200/15-60 which exempts property of taxing districts and states “. all property owned by a taxing district that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.” The third provision that the applicant might qualify under is found at 35 **ILCS** 200/15-135, which provides an exemption for school districts and community college districts. That provision states “ All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.”

The applicant asserts that it would cost more to mow the parcel than is being paid in rent and cites People v. U. of I. Foundation, 388 Ill 363 (1944) (hereinafter referred to as U. of I.) in support of its argument. In U. of I., the Supreme Court addressed the requested exemption for the Illini Union Building, Men’s Residence Halls, Illini Hall and the Arcade. The court held that the property was used “to provide adequate facilities for university purposes-in short, ’a public education purpose.’ The fact that some temporary incidental use is made of a relatively small portion of the property from which income is derived, as for the restaurant in the Arcade building, is immaterial.” *Id.* at 375.

I find the facts in U. of I. are distinguishable from the facts before me. In U. of I., the parcels at issue were being used as 1) a residence hall; 2) the student center known as the Union Hall where students ate, attended classes and recreational events; 3) the student center known as Illini Hall where the daily morning newspaper for the school was published on the first floor and the second floor of which was used as offices for various departments of the university; and 4) the Arcade where students ate and enjoyed recreational pursuits. Those activities are part of campus life. At issue herein is the use of the parcel for farming by a person unaffiliated with the educational organization and used for profit by that individual. Those circumstances are very different from the uses of the parcels in U. of I.

The issue of whether the applicant made a profit pursuant to a lease was addressed by the Illinois Supreme Court in Turnverein "Lincoln" v. Bd of Appeals, 358 Ill. 135 (1934). In that case, the court citing People v. Withers Home, 312 Ill. 136, stated "that if property, however owned, is let for return, it is used for profit and so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss." *Id.* at 144. *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988) *leave to appeal denied*.

Based on the above, I find that the applicant did not use the parcel in question for educational purposes during the period of May 22, 1997, through December 31, 1997, the period of time that the applicant owned the parcel. I find that the property was leased to a farmer. I therefore recommend that Randolph County Parcel Index No. 13-011-003-00 remain on the tax rolls for the 1997 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
March 15, 1999